

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KELDREN JOSHUA

Defendant/Petitioner,

v.

UNITED STATES OF AMERICA,

Plaintiff/Respondent.

Case No. 2:13-cv-00455-ODW-**
2:09-CV-08067 RSWL
2:05-CR-01140-RSWL

**DENIAL OF CERTIFICATE OF
APPEALABILITY**

Eight days Following his sentencing by Judge Ronald S. W. Lew on August 21, 2006 to a term of 188 month, Joshua filed his Notice of Appeal. (06-50493, DE 101 case 05-CR-1140). The Court of Appeals found that Petitioner had waived his right to appeal his sentence as part of his plea agreement and dismissed his appeal on November 28, 2008. (DE 263, 05-CR-1140).

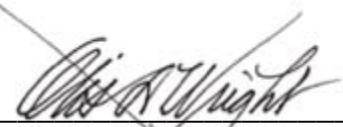
After the issuance of the Mandate, Joshua again sought to have his sentence vacated, set aside or corrected pursuant to 28 U.S.C. §2255. (DE 268, 05-CR-1140; 09-CV-8067, DE 1. Petitioner raised issues with respect to the calculation of his guidelines or recommended sentencing range. First he contended that his criminal history was overstated. Based on four (4) criminal history points, he fell within criminal history category III. At the time of sentencing Judge Lew apparently agreed with the overstatement argument and reduced his criminal history to Category II with a resulting sentencing range of 188 - 235. He was sentenced at the low end of that range. (See

1 J&C filed 8-22-06 docket entry 100). On May 13, 2010 Judge Lew denied the motion to further
2 reduce his sentence. [DE 275]. It appears that Petitioner is primarily interested in having his
3 criminal history category reduced to I. Petitioner argues that he is entitled to safety valve
4 consideration, notwithstanding no application for same being made by the government, or that he
5 was subject to a mandatory minimum sentence, focusing his argument on the disqualifying fact that
6 he falls within criminal history category II and is therefore ineligible in any event. Consequently, he
7 seeks to have his criminal history category reviewed and lowered to category I. However, for the
8 reasons set forth in the court's June 18, 2013 order, his points have been correctly calculated and his
9 arguments to the contrary have no merit.

10 Petitioner has made no showing, much less a substantial showing of a denial of a
11 constitutional right. Petitioner has waived, in writing, his right to appeal his sentence, yet he persists
12 in repeatedly attempting to do so. His arguments have no merit and his continuous petitions for
13 review by the circuit are frivolous. This court therefore declines to issue a certificate of
14 appealability pursuant to 28 USC 2253.
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16 **IT IS SO ORDERED.**

17 July 23, 2013

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**
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